

### **REMARKS/ARGUMENTS**

With this Amendment, claims 1-54 are pending. Claims 1, 25-29, 31, 33, 35 and 51 have been amended. Claim 53 has been allowed. Applicants respectfully request reconsideration of the claims as currently pending.

#### **Claim Amendments**

Independent claim 1 has been amended to recite that the lower foot plate includes a forefoot portion and a heel portion, and a length at least about the length of the upper foot plate. Claim 1 was further amended to include an attachment device mounted to the upper foot plate. These amendments are fully support by the claims, specification and drawings as originally filed.

Independent claim 25 has been amended to recite that the upper foot plate has a substantially rigid portion a flexible portion. This amendment is support at, for example, page 6 of the specification. Claim 25 has also been amended to recite that a lower surface of the attachment device is mounted to a sloped upper surface of the upper foot plate. This amendment is support by, for example, Fig. 3 and supporting disclosure. Dependent claim 26 recites that an upper surface of the attachment device is oriented generally horizontally when the prosthesis is in a mid-stance position. This amendment is supported by, for example, Fig. 7 and supporting disclosure. Claim 51 similarly recites that the upper surface of the attachment device is oriented substantially horizontally when the prosthesis is in a mid-stance position.

#### **Rejection Under 35 U.S.C. § 112**

The Examiner rejected claim 7 as being indefinite. Claim 7 has been amended to depend from claim 3 such that it is no longer indefinite.

#### **Rejections Under 35 U.S.C. § 102**

Claims 1-6, 8-15 and 23-24 stand rejected as being anticipated by U.S. patent 6,398,818 to Merlette ("the '818 patent"). The Office Action asserted that Figs. 2-4 show each feature of the rejected claims. Claim 1, upon which each remaining rejected claim

depends, has been amended to recite that the lower foot plate has a length at least about the length of the upper foot plate and an attachment device attached to the upper foot plate. The device reported in the '818 patent is a lower leg prosthesis in which the upper plate extends upwardly and vertically to attach to a residual limb at a point above the ankle (Fig.1). Accordingly, the '818 patent does not disclose an attachment device coupled to the upper foot plate as claimed. Alternatively, if the Examiner interprets the entire upper plate disclosed in the '818 patent as being an upper foot plate, claim 1 also recites that the lower foot plate is at least as about as long as the upper foot plate. The lower plate disclosed in the '818 patent is clearly shorter than the entire upper plate. Applicants respectfully request withdrawal of this rejection with respect to claim 1 and dependent claims 2-6, 8-15 and 23-24.

Claims 1-4, 10, 11 and 14 stand rejected as being anticipated by U.S. Patent 5,509,937 to Allard et al ("Allard"). The Office Action asserted that Allard discloses a prosthesis including a lower plate 27b, an upper plate 27a and an elastomeric layer 25 therebetween that extends substantially over the lower plate. Claim 1, upon which each remaining rejected claim depends, has been amended to recite that the lower foot plate includes a forefoot portion and a heel portion. The lower plate 27b disclosed in Allard does not include a heel portion because it extends upwardly along with the upper plate 27a such that it cannot contact the ground. Although the device disclosed in Allard includes a separate heel element 22, the elastomeric layer 25 cited by the Examiner does not extend over the heel portion as claimed. Applicants respectfully request withdrawal of this rejection with respect to claim 1 and dependent claims 3-4, 10, 11 and 14.

Claims 1-4, 10, 11, 14, 15, 23 and 54 stand rejected as being anticipated by U.S. Patent 5,156,631 to Merlette (the '631 patent). Claim 1 has been amended to recite an attachment device coupled to the upper foot plate. The upper foot plate 13 referred to by the Examiner does not include an attachment device coupled thereto. Alternatively, if the Examiner interprets the entire shank strut 11 disclosed in the '631 patent as being the upper foot plate, claim 1 also recites that the lower foot plate is at least as about as long as the upper foot plate. The lower plate disclosed in the '631 patent is clearly shorter than the entire

upper plate. Applicants respectfully request withdrawal of this rejection with respect to claim 1 and dependent claims 2-4, 10, 11, 14, 15, 32 and 54.

Claims 25-32, 34-35, 38-40, 42-44, 47 and 51 stand rejected as being anticipated by U.S. Patent 6,290,730 to Pitkin et al ("Pitkin"). The Examiner applied Pitkin to the claims in two ways. In the first interpretation, the Examiner asserted that Pitkin discloses a curved upper plate 22, lower plate 14 and an attachment device 24, 26 mounted to the upper plate 22. In a second interpretation, the Examiner asserted that Pitkin discloses a curved upper plate 16, a lower plate 14 and an attachment device 22 or 12 mounted to the upper plate 16. Both interpretations are discussed below.

Regarding the first interpretation, independent claim 25 recites that the attachment device is mounted to *the sloped upper surface* of the upper foot plate. Claim 51 recites that the mounting device is attached to a *curved upper surface* of the upper foot plate. In the Examiner's first interpretation of Pitkin, the mounting device 24, 26 is mounted to a flat, horizontal upper surface of the upper foot plate and not to a curved or sloped surface as claimed. This distinction is important because the upper surface of the claimed attachment device is oriented such that it can be attached to a lower leg while at the same time having a lower surface mounted to a non-flat and non-horizontal (i.e., curved or sloped) surface. Accordingly, the claimed device does not require a flat surface upon which the attachment device is mounted. Applicants respectfully request withdrawal of this rejection with respect to independent claims 25 and 51 and dependent claims 26-32, 34-35, 38-40, 42-44 and 47.

The Examiner's second interpretation defines bumper component 16 as the upper plate. As noted in Pitkin, the bumper component 16 is formed from an elastic material and provides shock absorption (Col. 2, lines 54-60). Claim 25, in contrast recites that the upper foot plate includes a substantially rigid portion and a flexible portion. The bumper component 16 disclosed by Pitkin does not include a substantially rigid portion as required by claim 25.

Claims 25-28, 33-36, 38-40, 47 and 51 stand rejected as being anticipated by U.S. Patent 5,116,384 to Wilson et al ("Wilson"). The Examiner asserted that Wilson discloses a prosthesis having a curved upper plate 48, a lower plate 12 and an attachment device 32 that conforms to the slope of the upper plate 48. Claim 25 as amended recites that the mounting

device is mounted to the sloped upper surface of the upper foot plate. Claim 51 recites that the mounting device is attached to curved upper surface of the upper foot plate. In contrast, as shown particularly in Figs. 4-6, the attachment device 32 disclosed in Wilson is mounted to a flat surface of upper plate 48. Applicants respectfully request withdrawal of this rejection with respect to independent claims 25 and 51 and dependent claims 26-28, 33-36, 38-40 and 47.

Claims 25-27, 29-31, 34-42, 45, 47 and 51-52 stand rejected as being anticipated by U.S. patent 5,181,932 to Phillips (“the ‘932 patent”). The Examiner asserted that the ‘932 patent anticipates the claims based on two interpretations. In the first interpretation, the ‘932 patent discloses a curved upper foot plate 50, a lower plate 12 and an attachment device conforming to the sloping upper plate. In the second interpretation, the ‘932 patent discloses a curved upper plate 14, a lower plate 12 and an attachment device conforming to the curved upper foot plate. Both interpretations are discussed below

Claim 25 as amended recites that the attachment device is mounted to the sloped upper surface of the upper foot plate. Claim 51 recites that the attachment device is attached to the curved upper surface of the upper foot plate. Under either interpretation proposed by the Examiner, the attachment device disclosed in the ‘932 patent does not include a *lower surface* mounted to the upper surface of the upper foot plate and an upper surface adapted for connection to a prosthetic component. Rather, because the ‘932 patent includes an ankle portion 50 or 14 that is oriented substantially vertically, the lower surface of the attachment device disclosed in the ‘932 patent does not contact the upper foot plate. Applicants respectfully request withdrawal of this rejection with respect to independent claims 25 and 51 and dependent claims 26-2, 29-31, 34-42, 45, 47 and 51-52.

Claims 23 and 24 were rejected as being obvious in view of Allard. Claims 23 and 24 depend from claim 1, which is allowable for the reasons discussed above with respect to Allard. Applicants respectfully request withdrawal of this rejection.

Claims 25, 42 and 46 were rejected as being obvious in view of U.S. Patent 5,800,569 to Phillips (“the ‘569 patent”). The Examiner asserted that Phillips does not disclose a curved upper plate, but that it would have been obvious to modify the disclosed upper plate to make it curved based on the prior art. Even assuming that it is obvious to utilize a curved

plate as asserted by the Examiner, claim 25 also recites that a lower surface of the attachment device is mounted to an upper sloped surface of the upper foot plate. As discussed above, none of the prior art discloses or suggests mounting an attachment device to a sloped surface, which still allowing the upper surface of the attachment device to be oriented such that it can be mounted to a prosthetic component. Accordingly, none of the prior art cited by the Examiner discloses or suggests this claim feature. Applicants respectfully request withdrawal of this rejection.

Allowable Subject Matter

The Examiner asserted that claims 16-22 and 48-50 include allowable subject matter, but were objected to as depending from a rejected claim. Claim 1, upon which claims 16-22 depend, and claim 25, upon which claims 48-50 depend, should be allowed for the reasons set forth above. Applicants respectfully request withdrawal of this objection.

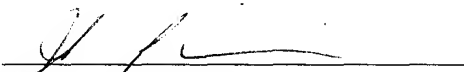
**CONCLUSION**

All of the claims remaining in this application are in condition for allowance. A prompt notice to that effect is respectfully requested. If there are any remaining questions, the Examiner is requested to contact the undersigned at the number listed below.

Respectfully submitted,

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Dated: February 19, 2008